

# Chapter 1

# Creating the Family Court Concept in Indiana

## A. The Vision

The increasing complexity and proliferation of court proceedings involving members of the same family led Indiana jurists, lawyers and legislators to search for better ways to coordinate and handle such cases.

In his 1997 State of the Judiciary address, Chief Justice Randall T. Shepard urged the legislature to examine the idea of creating family courts in Indiana by funding three pilot counties where people would like to volunteer to try something different. The Chief Justice discussed the need for reform:

*The legal problems generated by tens of thousands of troubled families come to the courts in many ways - divorce, delinquency, children in need of services, domestic violence, to name a few. In counties of any size, it is possible that the same family may wind up in two or three different courtrooms depending on the legal label used for the cause that brought them to court. The solution to that problem is a family court. A family court is a place where you deal with the whole family in a single courtroom regardless of legal label.<sup>1</sup>*

After attending the 1998 Summit on Unified Family Courts in Philadelphia, Associate Supreme Court Justice Frank Sullivan, Jr. addressed the Indiana Commission on Courts, noting favorably the following aspects of the national movement for family courts: coordination of the family's multiple cases before the same judge, court referral to a wide array of social services for children, availability of mediation and other forms of non-adversarial dispute resolution in family law matters, and legal assistance to pro se litigants.<sup>2</sup> Justice Sullivan urged that the family court concept involves shifting our mind-set from organizing family law cases on a case-by-case basis to a family-by-family basis.<sup>3</sup>

Over the past years the Indiana Supreme Court has been persistent in identifying the needs of families and advocating new approaches. The Indiana Family Court Project provides the means to test and develop model systems to better serve children and families in the court system.

It is important to note that the Indiana Family Court Project is more than just case coordination and programming. It is a concept based on the

<sup>1</sup> Chief Justice of Indiana Randall T. Shepard, "State of the Judiciary," (Jan. 30, 1997).

<sup>2</sup> Although Cincinnati, Ohio is credited as having the first family court in the early 1900s, the family court concept really took root in the 1950s with the development of the Standard Family Court Act to assist states interested in creating family courts, and in the 1960s with the establishment of statewide family courts in Hawaii and Rhode Island. See Barbara A. Babb, "Where We Stand: An Analysis of America's Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts," 32 *Family Law Quarterly* 31, 35-37 (1988). In the 1990s, the National Council of Juvenile and Family Court Judges and the American Bar Association endorsed the family court approach. See Sanford N. Katz and Jeffrey A. Kuhn, "Recommendations for a Model Family Court; A Report from the National Family Court Symposium" (National Council of Juvenile and Family Court Judges, May 1991). See also ABA, "Policy on Unified Family Courts" (adopted August 1994), 32 *Family Law Quarterly* 1, 1-2 (1998). There is currently significant family court activity in California, Florida, and Ohio. See "Unified Courts For Families Symposium Manual" (Center for Families, Children and the Courts-California Administrative Office of the Courts, September 24-25, 2002); "A Model Family Court for Florida: Recommendations of the Florida Supreme Court's Family Court Steering Committee" (Office of Florida State Court Administrator, June 2000) (available at Web site [www.flcourts.org](http://www.flcourts.org) or by telephone at 850-922-5691); Gregory J. Halemba and Hunter Hurst Jr., "Ohio Family Court Feasibility Study" (National Center for Juvenile Justice, April 18, 1997). There is innovative one family-one judge programming in Kentucky and some counties in Oregon, Washington, and California. See Rural Family Courts in Kentucky: Lessons Learned (State Justice Institute, 2001); Victor E. Flango, "Creating Family Friendly Courts: Lessons from Two Oregon Counties," 34 *Family Law Quarterly* 118 (2000); Hon. Steven J. Howell, "One Judge-One Family: Butte County's Unified Family Court," 1 *Journal of the Center for Children and the Courts* 171 (1999). In January 2003 New York's Chief Judge Judith S. Kaye announced her intention to seek coordination of criminal, family, and protective order cases involving the same family members in Integrated Domestic Violence (IDV) Courts in which one judge handles all family-related matters involving the same family as one integrated proceeding. See Johnathan Lippman, "IDV Court Shows New Way to Treat Families in Crisis," *New York Law Journal* (January 29, 2003).

<sup>3</sup> Justice Frank Sullivan Jr., "Unified Family Court Structure Recommended," *Res Gestae*, November-December 1998, at 28-30.

significance of family in our culture and our legal system. It recognizes the unique stresses and safety issues in family litigation, the role of the family in affecting individual behavior, and the particularized need for timeliness and consistency in judicial rulings involving children. The family court concept maintains that case coordination is required to avoid uninformed, inconsistent, or delayed rulings for families with multiple cases in the court system. It emphasizes a holistic and non-adversarial approach to problem solving. The concept encourages judges and attorneys to fully disclose information about the family’s legal cases in order to obtain a complete and long-lasting resolution to the family’s situation. The concept eschews unnecessary adversarial tactics. The family court concept promotes an open, common sense approach to the resolution of legal issues affecting the safety and stability of children, within the parameters of due process of the law.

B. Phase 1  
(1999-2001)

At the request of the Supreme Court and with the support of bar members and trial judges, the Indiana General Assembly appropriated \$400,000 in 1999 for a two-year pilot project.

The Supreme Court appointed the Honorable Margret G. Robb to chair the newly formed Family Court Task Force and asked the Division of State Court Administration to implement the project. The Division retained the services of a family court expert to research national trends in family court development and to suggest feasible models and strategies for Indiana. Ultimately, the Division contracted with the family court expert to provide not only substantive legal consulting services but also to provide hands-on management of the local projects.

Eight counties applied through detailed written applications to serve as pilot counties. The Task Force strongly encouraged counties to generate

broad based support for their projects within the judiciary, bar, and other important stakeholders of their communities. Another key element of the selection process was the transferability of the proposals, with the intention that the pilot counties would serve as mini laboratories for developing processes that could easily be implemented in other counties of similar composition. The Task Force indicated a preference for proposals that demonstrated broad based support and identified workable and transferable models.

The Task Force recommended and the Supreme Court selected the proposals submitted by **Johnson**, **Monroe** and **Porter** Counties for grant awards. These counties proposed two different models for coordinating the cases of families who have multiple cases pending before more than one judge, and they proposed the development of other specialized programming that would serve families more expeditiously.

Although there were not enough grant funds for a

Table 1: Phase 1 Family Court Counties

	County Seat	Population	Number of Judicial Officers	Location
Phase 1				
Johnson	Franklin	115,209	6	Central
Monroe	Bloomington	120,653	7	South
Porter	Valparaiso	146,798	9	Northwest

family court project award to a fourth county, the Task Force decided to draw Putnam County within the project by providing consulting services to help it develop affordable non-adversarial dispute resolution services in child protection cases, pro se custody disputes, and other intra-family litigation. Putnam County received funds through the federal Court Improvement Project to resource its innovative dispute resolution project. Putnam County was later designated an official family court project in Phase 2.

There was significant activity at both the state and local level during Phase 1 of the Family Court Project. In 2000, the family court pilot projects

participated in a Strategic Directions meeting with family court expert Jeffrey Kuhn, attended the National Symposium on Achieving Prompt and Affordable Justice in Family Law Cases, and developed the Family Court Values and Outcomes. The Supreme Court issued four Family Court Rules for the exclusive use of the pilot courts. In June and December each family court submitted detailed Family Court Reports, and the key judicial and administrative officers for each project met at two Family Court Meetings to share program development ideas, exchange sample forms, and problem solve. In 2001, Jeffrey Kuhn conducted two separate site visits with each pilot county, surveyed 300 attorneys and judges regarding family and juvenile law issues and court processing, and conducted three state-wide focus groups on family law issues. In April, representatives of each family court presented a session on family court development for the Indiana Judicial College. In November, the family courts submitted detailed statistics and narrative reports and participated in a Family Court Annual Meeting.

Phase I of the Family Court Project concluded December 31, 2001. Each pilot county submitted a detailed manual including reports, collected data, written policies and procedures, and forms which would enable other counties to duplicate their successful efforts. The manuals were copied for distribution to the Phase 2 counties.

## C. Phase 2 (2002-2003)

In Phase 2 of the Family Court Project, the general focus of the project remained the same with some fine-tuning. Phase 2 set the following additional goals: **(1)** mentor new pilot sites to implement family court projects based on models created by the initial pilot counties; **(2)** create models for multiple county case coordination and

service delivery, and **(3)** expand the development of affordable, non-adversarial dispute resolution and service referral programming to at-risk families.

In the fall of 2001 nine counties submitted applications to the Family Court Task Force with proposals for new family court projects. In November, the Supreme Court made the final selection and announced the new pilot projects to begin operation in 2002. **LaPorte and Marion** Counties were selected to develop single county family court projects, and **Montgomery and Boone** Counties were selected as the first multiple county family court project. **Putnam** County was officially designated as a family court pilot project with the responsibility to mentor adjacent **Owen** County in developing non-adversarial dispute resolution programming.

Phase 2 encompasses not only new projects but also the continued support of the original project counties. The Supreme Court provided some

Table 2: Phase 2 Family Court Counties

	County Seat	Population	Number of Judicial Officers	Location
<b>Phase 2</b>				
Putnam	Greencastle	36,019	2	Central west
Owen	Spencer	21,786	2	South West
Boone	Lebanon	46,107	3	Central west
Montgomery	Crawfordsville	37,629	3	Central west
LaPorte	LaPorte	110,106	7	North west
Marion	Indianapolis	860,454	65	Central

reduced funding to the original projects to help them transition to more permanent funding. In addition, the original counties continue to participate in organizational meetings, evaluations and can avail themselves of the family court consulting services. Most importantly, the original counties serve as mentors to the new project counties by helping them deal with legal, administrative, program, and organizational problems that the original counties have already experienced.

Phase 2 was energized by the new family courts. In 2002, the family court consultant conducted

multiple site visits to the individual counties. The original and new pilot counties submitted implementation and six month family court reports, and attended Family Court Meetings in June and December. The original pilot counties hosted "question and answer" sessions and all the projects shared their experiences, concerns, and problem-solving ideas. In 2003, new legislation to help low income families afford Alternative Dispute Resolution spurred an interest in non-adversarial dispute resolution programming. Throughout the summer and fall the family court consultant met with counties interested in applying for family court seed grants, and applications were submitted for consideration for Phase 3. In the late fall, the family court projects submitted narrative reports for the October Family Court Meeting which included an exchange of new programming ideas and a thoughtful assessment of the "Most Significant Aspects of Family Court: What Works and What Doesn't?" All the family court projects filed electronic and hard copies of their family court manuals, which included policies and procedures, forms, and all other documentation necessary to duplicate their programs in other counties.

Phase 2 ends December 31, 2003, and Phase 3 pilot projects begin operation in 2004.

## D. The Indiana Focus

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Throughout the country there is no common structure or definition of the term Family Court.<sup>4</sup> Some judicial systems use the term to refer to the court that handles all divorce cases. A more comprehensive Family Court approach includes the filing of all divorce, child protection, delinquency, protective order and probate matters in one court or division, with significant court provided service delivery. A middle ground of innovative programming was developed in the 1990s with a focus on only those families who have multiple

cases pending in the court system or are otherwise in need of specialized services. This was the direction that Indiana took - choosing to develop case coordination and other programming only for the families most in need.

### 1. Programming

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The Indiana Family Court Project initially targeted families with multiple cases pending in the court system and families with complex custody litigation involving child safety issues. The pilot counties created two different models to coordinate multiple case families: **(1)** transfer the family's multiple cases to the same judicial officer (referred to as a *one family-one judge* or *case bundling*), or **(2)** provide basic information on the family's multiple cases to all the judges, attorneys, and parties involved in the family's multiple cases without transferring the cases to the same judge (referred to as *information sharing between multiple courts* or *case tracking*).<sup>5</sup>

Pilot counties also developed models for affordable non-adversarial dispute resolution. These dispute resolution models intentionally involved aspects of case coordination by requiring family court personnel to conduct court record searches on all participants. Record searches ensured that mediators and parties were informed on all the family's pending litigation and outstanding court orders, which enabled more informed decision making during the mediation process and avoided inconsistent orders. Family courts have also used non-adversarial judicial case conferences and status hearings to help parties reach agreement.

Phase 2 family courts adopted models of case coordination and non-adversarial dispute resolution that best met their needs, and created their own innovative programming.

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<sup>4</sup> For discussion on alternative models for family courts, see Carol F. Flango, et al., How Are Court Coordinating Family Cases? (National Center for State Courts, 1999); see also Frances G. Hill, "What's a family court and what's in it for the lawyer?" *Res Gestae* November 2000 at pp. 26-33.

<sup>5</sup> See Chapter 2 of this report at section B. for more detailed discussion on purpose and process of case coordination models and section C for more details on non-adversarial dispute resolution programming.

Table 3: Case Coordination and Non-Adversarial Dispute Resolution Programming

	Case Coordination Models		Non-Adversarial Dispute Resolution
	<i>One Judge- One Family (Bundling)</i>	<i>Information Sharing Between Multiple Courts (Case Tracking)</i>	
<b>Phase 1</b>			
Johnson	X		Judicial status conferences*
Monroe	X		Paternity/divorce mediation
Porter		X	Paternity/divorce mediation
<b>Phase 2</b>			
Putnam			Facilitation of all case types
Boone	X	X	Planning programming
Montgomery	X	X	Planning programming
LaPorte		X	Facilitation CHINS cases
Marion	X	X	Planning custody mediation
Owen			Facilitation of all case types

The Phase 1 and 2 counties developed specialized programs for at-risk or low income families without access to affordable services or case monitoring. The programming included direct services case management, service referral, specialized assistance for families without legal representation, protective order coordination, truancy reduction, and other innovative programming to more expeditiously and effectively serve families in the court system through a "family focus." The Family Court Project has evolved into a broad range of strategies and programs to serve children and families.<sup>6</sup>

Table 4: Specialized Services for Families

	Services Referral	Direct Services Case Management	Resource Room	Family Assessment	Pro Se Desk	Protective Order Program	Truancy Programming
Johnson	X						
Monroe	X	X					
Porter	X	X	X	X			X
Putnam	X		X		X	X	
LaPorte	X	X					X
Marion	Seeking funds					X	

<sup>6</sup> See Chapter 2 of this report at section D. for more detailed discussion on special service programming in the family court.

## 2. Values and Outcomes

In Phase 1 of the Family Court Project, the original pilot counties agreed on the following set of Values and Outcomes. These values are consistent with the broad goal of the Indiana Supreme Court to better serve children and families in our court system.

<b>Value:</b> INTEGRATED INFORMATION SYSTEMS
<b>Outcome 1:</b> Court and parties have knowledge of pending litigation and orders affecting the family
<b>Outcome 2:</b> Court and parties have access to evaluations, assessments, and reports regarding family members, when consistent with rules of evidence and due process of law
<b>Value:</b> COORDINATION AND CONSISTENCY
<b>Outcome 1:</b> Avoid conflicting and redundant orders
<b>Outcome 2:</b> Coordination of services and interagency communication to avoid duplication and gaps in service delivery
<b>Outcome 3:</b> Case monitoring for compliance with court orders
<b>Value:</b> EXPEDITION AND TIMELINESS
<b>Outcome 1:</b> Avoid unnecessary delays in the judicial process
<b>Outcome 2:</b> Reduce number of hearings
<b>Outcome 3:</b> Expedite dispositions
<b>Value:</b> ALTERNATIVE DISPUTE RESOLUTION
<b>Outcome 1:</b> Avoid time consuming and divisive court hearings through alternative dispute resolution
<b>Value:</b> SAFE AND HEALTHY CHILDREN AND FAMILIES
<b>Outcome 1:</b> Availability of assessment and treatment services for children and families
<b>Outcome 2:</b> Avoid relitigation of same issues
<b>Value:</b> TRANSFERABILITY OF FAMILY COURT MODELS TO OTHER COUNTIES
<b>Outcome 1:</b> Cost effectiveness of family court
<b>Outcome 2:</b> Development of forms, procedures, and rules to implement family court concepts

In Phase 2 of the Family Court Project the Supreme Court sought to meet the additional value of effectiveness and expediency in pro se litigation, and the goal of developing multiple county case coordination and service delivery. One of the new goals for Phase 3 is to implement "family focused" drug court programming in 2004, if feasible.

## 3. Project Individuality and Flexibility

Project individuality is the hallmark of the Indiana Family Court Project. Each pilot county is encouraged to develop case coordination models and service programming consistent with its own needs and resources. One county may designate its pilot project solely as an administrative mechanism to more effectively coordinate families with multiple cases. Another county may focus on affordable non-adversarial dispute resolution in intra-family litigation. A third county may assimilate pre-existing court programming into its pilot project, thus creating a broad family court umbrella over new and pre-existing programming. Therefore, some family court projects may have large budgets and multiple personnel, while others have modest budgets with one employee

or only a part-time employee or contract position. All of these approaches are equally respected and encouraged. Additionally, pilot projects may change in scope, direction, and programming over time.

Although the pilot projects are all unique, each county functions within the grant terms of the Indiana Family Court Project and the Family Court Rules authorized by the Supreme Court.

## E. Project Management

The Indiana Family Court Project is a program of the Indiana Supreme Court's Division of State Court Administration. The Division Executive Director, Lilia Judson, with assistance from the Indiana GAL/CASA Director, Leslie Rogers, and her predecessor, Nancy Gettinger, comprise the Division team. The Family Court Task Force, chaired by Honorable Margret G. Robb of the Indiana Court of Appeals, provides guidance to the projects. The Task Force is comprised of five circuit and superior court judges and a representative from the Family Law Section of the Indiana State Bar Association. The project "point person" is a juvenile and family law expert, Frances G. Hill, who works under a contractual relationship as the Family Court Consultant.

A core group comprised of the Task Force Chair, Executive Director of the Division, the GAL/CASA Director, and the Family Court Consultant, provide the ongoing operational management for the project and meet monthly or bi-monthly for that purpose.

The Family Court Consultant is responsible for the day-to-day management of the Family Court Project. The consultant has dual responsibilities of administering the project at a state level and working directly with each of the pilot projects. The state level responsibilities have included:

- Researching alternative models for case coordination throughout the country
- Developing processes for selection of pilot counties
- Monitoring fund distributions to pilot counties
- Facilitating development of Family Court Rules
- Arranging programming for Family Court

Strategic Directions meeting and twice annual Family Court Meetings

- Coordinating with statewide committees (Judicial Domestic Relations and Juvenile Improvement Committees, Indiana State Bar Association, State Pro Bono Commission, State Pro Se Advisory Committee) to integrate development of Family Court Project with already existing programming
- Developing statewide public relations and educational opportunities, including authoring Res Gestae article, presenting at State Bar meetings, arranging Family Court workshop for annual judicial college, and initiating Family Court Web site
- Developing evaluation tools, including statement of Values and Outcomes and standardized data collection
- Obtaining a grant for the evaluation services of an independent family court expert, and facilitating the expert's work in conducting site visits to pilot counties, administering statewide written surveys and leading focus groups on family justice issues

Through regular site visits, telephone consultations, and electronic communications, the Family Court Consultant gives the local projects hands-on assistance with the following tasks:

- Appointing and utilizing a local Family Court Advisory Board
- Determining case coordination models and/or non-adversarial dispute resolution and service programming appropriate to their needs
- Setting eligibility criteria and establishing policies and procedures
- Developing form letters, notices, and orders and implementing data collection
- Conducting legal and community training on family court procedures and programming
- Implementing Family Court Rules
- Identifying best practices for serving families
- Preparing twice annual project reports
- Developing and utilizing participant surveys to evaluate project effectiveness and need
- Developing long-term funding from local government and grant sources

## F. Legal Issues and Family Court Project Rules

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As the local projects were developing new approaches to handling multiple cases involving members of the same family, it became apparent that certain long standing legal concepts, traditions and rules would need to be re-evaluated and possibly changed in order to accommodate the processes envisioned in the family court concept.

For example, the need to share information about proceedings in other courts with people who are not parties to all the same cases may conflict with Indiana law on judicial notice and strongly held perceptions on confidentiality. Also, Indiana's long tradition and rules providing for a liberal change of judge process would frustrate one of the core models of family court case coordination - *one family-one judge*. Statutes and case law set jurisdictional demarcations which in the context of a family court project could hinder the ability to move all of the family's different types of cases to the same judge.

With these issues in mind, the pilot project participants decided to ask the Supreme Court for authority to deviate from some of the established procedures. The participating judges, family court personnel, Task Force members and chair, and Division representatives recommended a set of four rules that would provide some flexibility to the family court projects. In July of 2000, the Indiana Supreme Court adopted the recommendation and, by order, promulgated four Family Court Project Rules. The order provided that only courts

participating in the family court project could avail themselves of the rules, that the participating courts would have to make an affirmative action in order to adopt the special rules by local rule, and that the special rules expire at a date certain, unless extended by the Supreme Court.

The Family Court Rules were intended to exempt the family court projects from contrary rules which potentially could hinder the coordination processes being tested in the pilot projects. The special rules enable the family court projects to **(1)** hear juvenile matters concurrently with other family law litigation involving the same child; **(2)** use judicial notice to enter orders from the family's other related cases as evidence in the instant case; **(3)** disclose information from confidential juvenile cases to courts and parties involved with the family's other custody litigation; and **(4)** prevent families from transferring their multiple cases away from the family court judge, absent cause.

On January 14, 2002 the Indiana Supreme Court issued an Order Approving and Extending Family Court Project Rules to the original pilot projects and to the new pilot projects through December 31, 2003. The order requires that each pilot county "shall, by order entered in the Record of Orders and Judgments for said court, indicate which if any of the Family Court Project Rules shall be used by that court and shall give notice to all parties or their attorneys that appear in the Family Court Project of such local order and Family Court Project Rules." Most of the family court projects adopted the Family Court Rules as part of their local court rules.

# FAMILY COURT PROJECT RULES

(For use only in the Pilot Family Courts)

## DEFINITIONS

**Family Court.** Family Court is the court or courts before which cases involving a family or household are linked together for purposes of case coordination. The individual cases maintain their separate integrity and separate docket number, but may be given a common family court designation. The individual cases may all be transferred to one judge, or may remain in the separate courts in which they were originally filed.

**Family Court Proceeding.** A Family Court Proceeding is comprised of the individual cases of the family or household, which have been assigned to Family Court.

## Rule 1: EXERCISE OF JURISDICTION

The Family Court may exercise jurisdiction over any case involving the family at the same time it exercises jurisdiction over a juvenile case (Child In Need of Services, Delinquency, Status, and Paternity) involving the family.

## Rules 2: CONCURRENT HEARINGS

The Family Court may, in the court's discretion, set hearings on related cases to be heard concurrently, take evidence on the related cases at these hearings, and rule on the admissibility of evidence for each cause separately as needed to adequately preserve the record for appeal. This rule applies only when the cases are pending before the same judicial officer.

## Rule 3: DESIGNATION OF FAMILY COURT CASE AND CHANGE OF JUDGE FOR CAUSE

Once notice is sent to the parties that a case has been selected for Family Court, no motion for change of venue from the judge may be granted except to the extent permitted by Indiana Trial Rule 76.

Within ten (10) days after notice is sent that a case has been selected for Family Court, a party may object for cause to the Family Court designation.

A motion for change of venue from the judge in any matters arising in the Family Court proceeding or any future cases joined in the Family Court proceeding after the initial selection of cases shall be granted only for cause.

If a special judge is appointed, all current and future cases in the Family Court proceeding may be assigned to the special judge.

## Rule 4: JUDICIAL NOTICE AND ACCESS TO RECORDS

**Notice of Case Assignment.** Within a reasonable time after a case is assigned to Family Court, the court shall provide to all parties in the Family Court proceeding a list of all cases that have been assigned to that Family Court proceeding.

**Judicial Notice.** Any court having jurisdiction over a case assigned to Family Court may take judicial notice of any relevant orders or Chronological Case Summary (CCS) entry issued by any Indiana Circuit, Superior, County, or Probate Court.

If a court takes judicial notice of:

- (a) a court order, the court shall provide a copy of that court order; or
- (b) a CCS or CCS entry(s), the court shall provide a copy of the entire CCS.

The court shall provide copies of the order or CCS to the parties to the case at or before the time judicial notice is taken.

**Access to Records.** Parties to a Family Court proceeding shall have access to all cases within the Family Court proceeding, with the exception of confidential cases or records to which they are not a party. Parties may seek access to the confidential cases or records in another case within the Family Court proceeding in which they are not a party, by written petition based on relevancy and need. Confidential records shall retain their confidential status and the Family Court shall direct that confidential records not be included in the public record of the proceedings.

## 1. Family Court Rules Definitions

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The definition section of the Family Court Rules was intended to clarify that if any court in the pilot county hears a case that has been linked to the family's other litigation and assigned to the family court project, that court serves as a Family Court for purposes of that case. The judge of that court may utilize the Family Court Rules as adopted by the pilot county. The definition section further clarifies that the family's individual cases maintain their separate integrity and docket numbers, but all of the family's cases jointly may be referred to as the family court proceeding.

## 2. Rule 1: Jurisdiction to hear the CHINS and Custody Cases Simultaneously

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Rule 1 is primarily applicable to courts using the *one family—one judge* case coordination model. This Rule does not give any court subject matter jurisdiction over case types it does not already have under statutory grants of jurisdiction. It does, however, provide that if a court already has jurisdiction to hear all of the family's case types, that court can hear and issue rulings in multiple family and juvenile court cases involving the same child consistently and at the same time. This avoids the glitch in the case law which, despite recent statutory amendments, still limits the ability of the

court system to create simultaneous and consistent orders for a child who is the subject of a juvenile case and a separate custody case.<sup>7</sup> The case law has long provided that the court's exclusive jurisdiction in the juvenile case bars the juvenile court or any other court from hearing another type of custody case involving the same child until the juvenile case is closed. The case law also prevented simultaneous rulings in CHINS and guardianship cases involving the same child. Rule 1 overcomes this case law in the family court. The family court judge who has bundled the family's juvenile and custody cases involving the same child into his/her court can have both proceedings open at the same time and can issue consistent and coordinated orders in both cases.

## 3. Rule 2 Concurrent Hearings

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Rule 2 allows a family court to hold concurrent hearings in multiple cases involving the same child. Under this Rule, evidence can be presented at the same time in multiple cases, thereby avoiding the need to bring witnesses and parties to the court on two separate occasions. The Rule does not consolidate the cases, and the court must still create a separate record in each case and adhere to evidentiary and legal standards applicable to each case type. While concurrent hearings may not be

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<sup>7</sup> IC 31-30-1-12 (effective 1999) allows a court to hear a divorce custody modification while a CHINS or delinquency case is open regarding the same child. IC 31-30-1-13 (effective 1999) allows a court to hear a paternity custody modification case while a CHINS or delinquency case is open regarding the same child. See *Reynolds v. Dewees*, 797 N.E.2d 798 (Ind.Ct.App.2003) (court can hear custody case modification while CHINS case is open involving the same child). Also, 2002 legislation overcomes some jurisdictional impediments to hearing juvenile CHINS and guardianship cases involving the same child at the same time. See IC 31-30-1-1(10); IC 31-30-2-1(d)(e)(f), IC 31-34-21-7.7. These laws grant the juvenile court jurisdiction in guardianship cases involving a CHINS child who is the subject of a permanency plan which recommends guardianship. However, both the custody laws and the guardianship laws are very limited in scope and do not allow the same court to hear all of these case types in all situations involving the same child. Therefore in all situations not specifically covered by the statutes, it is essential to utilize Family Court Rule 1 or else the following case law prohibiting simultaneous hearings applies. See *Fox v. Arthur*, 714 N.E.2d 305, 308 (Ind.Ct.App.1999) (Greene Circuit Court lacked jurisdiction to accept transfer of out-of-county dissolution custody modification or to consolidate dissolution custody modification with pending CHINS involving same child because Greene Juvenile Court had exclusive jurisdiction once CHINS petition was filed); *In re B. W.*, 709 N.E.2d 370, 373 (Ind.Ct.App.1999) (Marion County judge acting under juvenile jurisdiction in CHINS case lacked authority to consolidate pending divorce modification proceeding with CHINS case involving same child; the juvenile court had no jurisdiction in divorce custody proceeding because jurisdiction remained with court that issued the dissolution decree, and Indiana Trial Rule 42(D) did not permit consolidation of these cases for resolution of common issues at trial); *In re C.S.*, 713 N.E.2d 863 (Ind.Ct.App.1999) (judge with probate and juvenile jurisdiction could not rule in child's guardianship case until judge closed the CHINS case involving the same child); *Alexander v. Cole*, 697 N.E.2d 80, 82-83 (Ind.Ct.App.1998) (divorce court is without jurisdiction to rule on custody modification once CHINS petition is filed in juvenile court regarding same children); *Hemingway v. Sandoe*, 676 N.E.2d 368, 372 (Ind.Ct.App.1997) (juvenile court has no jurisdiction in dissolution, and therefore no jurisdiction to decide custody once CHINS or termination proceedings are closed); *P.B. v. T.D.*, 504 N.E.2d 1042, 1043 (Ind.Ct.App.1987), modified on rehearing on other grounds 507 N.E.2d 992 (Ind.Ct.App.1987) (once CHINS proceeding is initiated, divorce court lacks jurisdiction over a change of custody petition regarding the child who is the subject of the CHINS proceeding, until juvenile court either discharges child from CHINS proceeding or juvenile court correctly transfers CHINS case to divorce court).

prohibited by existing procedural trial rules, Rule 2 clarifies that they are permissible.

#### 4. Rule 3: Notice of Family Court Designation, Objection to Assignment to Family Court, and Change of Judge

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Rule 3 has two provisions: **(1)** notice of the selection of a case for family court and 10 days to object to the selection, and **(2)** change of judge for cause. Although the original focus in drafting the rule was on the change of judge issue, many pilot counties use Rule 3 primarily for the notification purpose. These courts report that attorneys and parties were more cooperative about the selection of cases (generally referred to as the assignment to the family court project) because they received the written notice and had ten days to object. They appreciated the time to research the family court project and discuss the potential consequences of the assignment with their clients. Although projects reported that parties and attorneys occasionally expressed concern upon notification of the family court assignment, no objections to the assignments were filed.

With regard to the Change of Judge focus of Rule 3, it is important to note that the provision in paragraph three (allowing a Change of Judge motion only for cause) may be used only if the court complies with the conditions of the other paragraphs of that rule. Paragraph one and two require the Family Court to give notice to the parties that their cases have been designated for the family court project and that the parties have ten days to object to the designation to family court for cause.

Rule 3 is applicable to the *one family–one judge* model of case coordination (also referred to as the *case bundling* model). The Rule was intended to avoid an automatic Change of Judge because a

party is dissatisfied with a ruling in one of the family’s multiple cases. The philosophy of the *one family–one judge* model is to maintain judicial consistency and accountability in the family’s multiple cases.

Under Rule 3, if the time limitation has not expired under Ind. Trial Rule 76 as to the individual cases initially being assigned to the family court project, a Change of Judge motion can be granted without cause. However, a Change of Judge motion can be granted only for cause on new cases that are joined to an already existing family court proceeding, even if the Trial Rule 76 time requirement has not expired as to the new case.

The participants in the Monroe County pilot project experienced some concern with Rule 3 when an Involuntary Termination of Parental Rights Case was filed regarding a child whose CHINS and paternity cases had earlier been assigned to the county’s *one family–one judge* court project. Although Rule 3 was intended to allow a motion for Change of Judge only for cause in new litigation added to an existing family court proceeding, counsel for the office of family and children (OFC) did not oppose the respondent parent’s motion for automatic Change of Judge. The OFC attorney was hesitant to use Family Court Rule 3 because it conflicts with the *Gosnell*<sup>8</sup> case, which applies the automatic Change of Judge provision in T.R. 76 to termination of parental rights cases.

#### 5. Rule 4: Judicial Notice and Confidentiality of Juvenile Records

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Rule 4 allows a pilot court to take judicial notice of court orders (or entries in the Chronological Court Summary) in the family’s multiple cases, and thereby admit those orders or CCS entries as evidence in the instant case. The Rule is in contravention of case law, which generally prohibits

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<sup>8</sup> See *State ex rel. Gosnell v. Cass Cir. Court*, 577 N.E.2d 957 (Ind.1991) (juvenile code provision requiring good cause for change of judge in termination of parental rights cases, now codified at IC 31-32-8-1, is in conflict with trial rule and is void: motion for change of judge shall be granted without proof of cause).

a judge from taking judicial notice of orders from other cases, even when the same judge presides in all of the cases.<sup>9</sup> In theory a judicial notice rule may not be needed because the parties can admit into evidence certified copies of court orders from other cases; however, parties may not be aware of such orders or may choose not to offer them as evidence for tactical reasons. Rule 4 gives the court the ability to identify other court orders involving the family and enter them as evidence even when the parties are unable or unwilling to do so on their own. Taking judicial notice of an order does not establish that the facts supporting the order are true, but merely establishes that a court issued a specific order.

Rule 4 requires that the pilot court provide to all of the parties to the family court proceeding a list of all cases that have been assigned to family court. This places all parties on notice regarding the existence of those cases and obligates conscientious attorneys to review those related case files, or at least to adequately discuss the potential responsibility with their clients. Rule 4 also requires the court to give copies of the orders or the Chronological Court Summary (CCS) entries to the parties before, or at the time, the court takes judicial notice of the orders or the CCS entries.

There has been some concern about the breadth of judicial notice. It was intended when the Family Court Rules were drafted that judicial notice was applicable to court orders from other cases, not to custody evaluations or other informational reports containing hearsay. While such reports may be very informative and avoid duplication of effort, due

process prevents wholesale admission of those types of documents through judicial notice.

Rule 4 also deals with access to confidential records. A confidentiality problem may arise when the parties to all of the family's multiple litigation are not the same and some of the litigation involves confidential juvenile cases.<sup>10</sup> This is not an uncommon occurrence. For example, Dad is not a party to the CHINS case involving Mom's other children and her new live-in boyfriend; however safety issues related to Mom's boyfriend may be central to Dad's divorce visitation case involving Dad's children by Mom. Dad would like to have access to the CHINS record to determine whether it is safe for his children to visit in Mom's home. Rule 4 states:

*Parties may seek access to the confidential cases or records in another case within the Family Court proceeding in which they are not a party, by written petition based on relevancy and need. Confidential records shall retain their confidential status and the Family Court shall direct that confidential records not be included in the public record of the proceeding.*

The juvenile court may deem it consistent with the best interest of the child to allow access to juvenile records to all parties to the family court proceeding and issue a standardized order accordingly.

<sup>9</sup> See *Lake County Division of Family and Children Services v. Charlton*, 631 N.E.2d 526, 529 (Ind.Ct.App.1994) (Improper for court to take judicial notice in CHINS case of support issues heard by same judge in paternity case involving the family members); *Matter of A.C.B.*, 598 N.E.2d 570 (Ind.Ct.App.1992) (Court cannot take judicial notice of ruling in father's paternity proceeding in the termination of parental rights case). But see *Kennedy v. Jester*, 700 N.E.2d 1170, 1173 (Ind.Ct.App.1998) (No error to take judicial notice of pending murder appeal in civil case seeking payment of insurance proceeds as party adversely affected by judicial notice acknowledged fact in question to trial court); *State v. Hicks*, 525 N.E.2d 316, 317 (Ind.1988) (Trial courts have sometimes properly taken judicial notice of proceedings in other cases in the same or other courts, contrary to general rule prohibiting this); Ind. Evidence Rule 201 (Rule allows trial court to take judicial notice of decisional law, but does not address or prohibit taking judicial notice of court orders).

<sup>10</sup> See IC 31-39-1-2 (Juvenile court records are confidential and available only in accordance with IC 31-39-2, and court shall take appropriate actions to protect juvenile court records from unauthorized disclosure). But see IC 31-32-6-2 (Juvenile court shall determine whether public is excluded from juvenile hearing on a case-by-case basis).

## G. Project Funding and Costs

In the two biennium budgets covering the period of 1999 to June 2003 the Indian Legislature appropriated a total of \$800,000 for four years of the Family Court Project, or approximately \$200,000 per year. Also, during this period the Division of State Court Administration received a grant of \$40,000 from the Criminal Justice Institute to hire an outside consultant to conduct an Independent Evaluation of the Family Court Project in 2001.

Table 5: **Indiana Family Court Project Budget and Expenditures for Phase 1 and 2**

Phase 1 Family Court Actual Income and Expenditures <i>(fiscal years July 1999 - June 2001)</i>		Phase 2 Family Court Biennium Budget <i>(fiscal years July 2001 - June 2003)</i>	
Actual Income		Budgeted Income	
\$400,000.00	Legislative/Supreme Court funds designated to Family Court Project	\$400,000.00	Legislative/Supreme Court Funds designated to Family Court Project
\$40,000.00	JAIBG Federal Grant awarded through Indiana Criminal Justice Institute for Independent Family Court Project Evaluation	<b>\$400,000.00</b>	<b>Total</b>
Actual Expenditures		Budgeted Expenditures	
\$302,040.85	Total disbursements to family court pilot counties	\$235,000.00	Total disbursements to family court pilot counties
\$80,000.00	Project Consultant Contract	\$75,000.00	Total disbursements to original pilot counties as transition funds
\$17,959.15	Consultant travel, phone and copy expenses, Strategic Directions Meeting Costs, Task Force and Family Court Meeting Expenses	\$60,000.00	Project Consultant Contract
		\$20,000.00	Consultant travel, phone, and copy expenses
\$40,000.00	Consultant Fee to Jeffrey Kuhn under JAIBG evaluation grant	\$10,000.00	Task Force and Family Court Meeting Expenses
<b>\$440,000.00</b>	<b>Total</b>	<b>\$400,000.00</b>	<b>Total</b>

The greatest expense in the Family Court Project budgets is the distribution to the pilot family court counties. The remaining project expenses averaged \$50,000 or less per year, and generally included the contract costs for the family court consultant and independent evaluator, the costs of materials, travel, communication, and meeting expenses, and the expenses of the Family Court Task Force and the twice-annual Family Court Meetings.

### 1. Family Court Distribution to Pilot Counties and Additional Funding Sources

The bulk of family court funding has gone directly to the pilot counties. Table 6 shows that a little more than \$150,000 was distributed to the pilot counties per year for the first four years of the family court project.

Table 6: Family Court Grant Distributions Per County

	1999-00	2000-01	2001-02	2002-03	2003-4	2004-5	TOTALS
<b>Phase 1 Counties</b>							
Johnson	\$45,741	\$44,785	\$12,500	\$12,500	\$6,000	\$4,000	\$125,526
Monroe	\$50,956	\$50,000	\$12,500	\$12,500	\$6,000	\$4,000	\$135,956
Porter	\$55,756	\$54,800	\$12,500	\$12,500	\$6,000	\$4,000	\$145,556
<b>Phase 2 Counties</b>							
Putnam				\$9,000	\$3,000	\$2,000	\$14,000
Owen			\$10,000	\$1,000	\$3,000	\$2,000	\$16,000
Boone-Montgomery			\$30,000	\$30,000	\$12,000	\$10,000	\$82,000
LaPorte			\$32,500	\$32,500	\$12,000	\$10,000	\$87,000
Marion			\$45,000	\$45,000	\$20,000	\$20,000	\$130,000
<b>Phase 3 Counties</b>							
Counties not yet selected					\$201,000	\$197,000	\$398,000
<b>TOTALS</b>	<b>\$152,453</b>	<b>\$151,586</b>	<b>\$155,000</b>	<b>\$155,000</b>	<b>\$269,000</b>	<b>\$253,000</b>	<b>\$1,134,03</b>

The distribution to the counties for Phase 3 of the Family Court Project will be \$269,000 in fiscal year 2003-4 and \$253,000 in fiscal year 2004-5. This is a total distribution of \$522,000 for the two year period, or slightly more than \$250,000 per year. This funding will include seed grants to new counties and transition funding to the existing project counties. The increased funding for Phase 3 is partially attributable to a \$60,000 grant, renewable for a second year, from the Court Improvement Project. Under the direction of Justice Frank Sullivan Jr, the Executive Committee of the Court Improvement Project (CIP) approved this funding for distribution to new family court projects that meet the child abuse and neglect standards and requirements for CIP funding.

Table 6 illustrates the commitment of the Supreme Court and the legislature to fund new family court counties every two years, and to provide reasonable transition funding to help all the family courts gain a permanent foothold in their communities to ensure

long-term programming. The total distributions directly to the pilot counties will exceed one million dollars by the close of fiscal year 2005.

The Family Court grant distributions from the Supreme Court are different from traditional grant funds in that the pilot counties have significant flexibility to modify the use of those funds upon request to the Division of State Court Administration. Also, pilot counties are not required to expend the funds by a set date. This allows counties to carry funds over from year to year, and to take time in developing programming that is most appropriate to their needs.

In addition to the Family Court grant funds, the pilot counties were encouraged to seek other grants and local government funding. Table 7 reflects the additional sources of income the pilot counties were able to generate, including amounts committed through 2003.

Table 7: Other Funding Sources for Pilot Counties Obtained between 2000 and 2003

	Court Improvement Project	Criminal Justice Institute	County Government	Probation User Fees	Office of Family & Children	Community Mental Health	Community Grants	Party Pay	TOTALS
Johnson			\$15,883						\$15,883
Monroe			\$44,000						\$44,000
Porter	\$109,449	\$98,957	\$87,158	\$20,000		\$98,957	\$107,421		\$521,942
Puamam	\$86,200				\$10,000		\$12,000	\$4,740	\$112,940
LaPorte	\$19,900								\$19,900
Marion		\$7,000							\$7,000
Owen					\$10,000				\$10,000
<b>TOTALS</b>	<b>\$215,549</b>	<b>\$105,957</b>	<b>\$147,041</b>	<b>\$20,000</b>	<b>\$20,000</b>	<b>\$98,957</b>	<b>\$119,421</b>	<b>\$4,740</b>	<b>\$731,665</b>

Some of the pilot counties were successful in obtaining federal grants, including funding from the Court Improvement Project and the Indiana Criminal Justice Institute for at-risk youth and delinquency prevention. Other major sources of funding are community grants, community-court collaborations, and local government. Community funding is further discussed under section H. below.

## 2. Personnel Costs and Reallocation of Resources

The pilot projects have expended funds for lap top computers, mileage reimbursement, mediation training, office equipment, supplies, copying, postage, phone, and other anticipated administrative expenses. However, the bulk of administrative supplies and space needs have been covered by in-kind contributions from local court systems.

The major expense for each of the pilot projects has been staffing. The pilot projects vary significantly in the number and type of staff members.

Table 8a: Phase 1 – Pre-Existing and Newly Created Staff and Contract Positions Per Project County

County	Already Existing Staff	New Positions	Mediation/Facilitation
<b>Johnson</b>	Court Administrator time partially reallocated to Family Court Development	Family Court Case Manager \$22,441.00	
<b>Monroe</b>		Family Court Coordinator \$36,350.00	Paternity Mediation Project uses local attorney volunteers and law students
<b>Porter</b>	Juvenile Systems Coordinator position fully redesignated to Family Court Supervisor \$32,460.00  Truancy Coordinator (Project Attend) \$19,873.00  Special Services Probation Officer \$19,873.00	Family Court Case Manager \$31,538.00  Community Services \$18,000.00  Special Services Case Manager \$21,888.00 (Paid by Mental Health Center) Probation clerk/ Office Manager \$21,959.00	Local family law mediators paid \$95 per hour per case in divorce mediation  Family Court staff are trained as mediators and provide divorce mediation at no additional cost  Paternity Mediation Clinic uses local attorney volunteers and law students, and pays local attorneys \$60 per hour when needed

Table 8b: Phase 2 – Pre-Existing and Newly Created Staff and Contract Positions Per Project County

County	Already Existing Staff	New Positions	Mediation/Facilitation
Putnam		Part-time Family Court Administrator 10 hours per week at \$60 per hour	Local family law mediators paid \$100 per hour per case
Owen		Part-time Family Court Administrator 10 hours per week at \$60 per hour	Local family law mediators paid \$100 per hour per case
Boone/Montgomery		Part-time Family Court Coordinator 25 hours per week at \$15 per hour	
LaPorte	Director of Juvenile Services partially re-designated to Family Court Coordinator position	Part-time Family Court Case Manager \$15,000.00 per year on contract	Family Court Coordinator serves as facilitator
Marion		Family Court Coordinator \$36,000.00 plus benefits	

Some staff positions were newly created, but many involved the redesignation of responsibilities within already existing staff positions, and/or some other reshuffling of programs within court and probation budgets. As can be seen from Tables 8a and 8b, Johnson, Porter, and LaPorte pilot counties used already existing court staff persons to create their family court projects. In LaPorte County the responsibilities of the full-time Director of Juvenile Court Services were partially reallocated to the development of the family court project. The Director took on an additional title of Family Court Coordinator, and also assumed the responsibility of creating and delivering direct services in the new facilitation (non-adversarial dispute resolution) programming for CHINS cases. In Johnson County the Court Administrator was designated as the point person to set up the policies and procedures and administrative processes for the family court pilot project, in addition to the administrator's already existing responsibilities. In Porter County the existing Juvenile Services Coordinator position was converted to the Family Court Coordinator position, and later that position was moved into the probation budget and retitled Family Court Supervisor. Porter County also integrated previously existing truancy programming and a special service probation officer into its family court project. This was based on Porter County's determination that the "family focus" in the family court project was most appropriate for this pre-existing programming.

Tables 8a and 8b illustrate that the cost of new personnel varied significantly depending upon whether the staff position was full-time or hourly. Although not specifically reflected in the tables, the cost of staff positions also varied depending upon the level of education and work experience sought. Pilot projects varied in seeking employees with expertise in court reporting, law, mediation, probation, or social work. Staff costs also varied depending upon the job responsibilities for the family court staff position, which ranged from court reporting, court administration, program development, grant writing, legal research, and/or social service delivery. The pilot projects generally chose to label staff positions as coordinator, administrator, or case manager but there is no standardized definition for those titles.

Tables 8a and 8b also reflects that some projects expended funds for non-adversarial dispute resolution

(labeled mediations/facilitation), and others provided these services through volunteers or family court staff. Putnam, Owen, and Porter Counties pay local attorneys at a rate of approximately \$100 per hour for mediation and facilitation services on a case-by-case basis. Porter and Monroe Counties use law students and volunteer attorneys for some mediation services. Porter and LaPorte Counties utilize family court staff members to provide some mediation services.

## H. Community Involvement and Funding for Pilot Projects

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Community involvement has been essential to pilot project development and ongoing funding. Each pilot county has formed a local Family Court Advisory Board of key community representatives. These Advisory Boards provide input and accountability for pilot projects and also ensure that the communities are aware of why and how projects function.

In addition to the local Advisory Boards, many of the pilot counties have utilized pre-existing community coalitions focused on the needs of children and families. Some examples of this include Johnson County's coalition of government and not-for-profit agencies called ACT, Monroe County's Wrap Around network of community service providers, and Porter County's Juvenile Summit. These coalitions embrace the family approach for serving children and youth. They work with pilot courts to help address the needs of families in the court system.

The family court projects have spawned new court-community collaborations. An example is Porter County's paternity mediation clinic that utilizes Valparaiso Law School students and local

attorneys to help mediate custody and visitation cases for indigent parties. The Monroe County pilot project collaborated with the Indiana University School of Law to develop a paternity mediation program using volunteer attorneys, law students, and the community conflict resolution group.

Court-community collaborations are a vital source for funding family court project programs. A few of the many examples of collaborative efforts to obtain funding for pilot projects are noted here. The Marion County family court pilot project collaborated with Child Advocates, Inc. to obtain funding from the Criminal Justice Institute. The Putnam County pilot project collaborated with the Youth Development Commission to obtain a Putnam County Community Foundation grant. In Porter County the local mental health center helped fund the initial family court coordinator position. Later the mental health center and the pilot project wrote a joint grant to hire a liaison to work with at-risk and high-risk families in the court system. Porter County also collaborated with the local Youth Service Bureau in developing mediation resources and other programs.

Family Court judges work closely with County Council members and Commissioners to ensure their understanding of the long term benefits and potential savings of family court coordination. The original pilot projects (Johnson, Monroe, and Porter) have received some local government funding for the salaries or benefits of pilot court staff members. In Putnam and Owen Counties the local Offices of Family and Children have contracted for family court facilitation services to resolve complicated custody and child protection issues outside of the courtroom.

